in theory, and to have adopted substantially the view that a devisee by his own crime may acquire the legal, but not the beneficial, interest in the property devised.

In *Deem* v. *Millikin*, 6 Ohio Cir. Ct. R. 357, a mortgagee for value without notice from a son who had murdered his mother was properly allowed to retain realty that came to the murderer by descent from his mother. This of course is in accordance with the rule that a *bona fide* purchaser may acquire trust property free from the trust.

It is to be regretted that Pennsylvania has gone to the other extreme and holds (following *Shellenberger* v. *Ransom*, 59 N. W. Rep. 935 (Neb.), noted in 8 HARVARD LAW REVIEW, 170) that a son who murders his father may take both legal and beneficial interest by the local statute of descent. *In re Carpenter's Estate*, 32 Atl. Rep. 637 (criticised in 30 Am. Law Rev. 130).

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LIABILITY OF MUNICIPAL CORPORATION FOR DEFECTIVE WATER-WORKS. — In *Springfield Fire & Marine Insurance Co.* v. *Village of Keeseville*, 42 N. E. Rep. 405, the New York Court of Appeals recently held that a municipality which maintained a public system of water-works, under a power conferred by the State, was not liable for the loss of property by fire caused by the defective condition of the water-works. The case raises the old question of the liability of a municipal corporation to private action for failure in the performance of a duty, and in the opinion of the court the general grounds upon which this question has always been decided are well set forth. The powers conferred upon municipal corporations by the State are of two sorts, which may be briefly characterized as public and private. The former are the legislative and governmental powers intrusted to the municipality as one of the political divisions of the State. The latter are those conferred for the private benefit of the municipality, which are exercised by it in its private capacity, and with which the State itself is unconcerned. Whether or not, apart from statute, a city is liable to private action for failure in the performance of a public duty specifically enjoined, is a disputed question, though probably it would generally be answered in the affirmative. It is perfectly well settled, however, that for neglect in the exercise of public, discretionary powers, a municipality is no more liable in tort than the State itself would be, while for neglect in the exercise of any private power, it incurs the same liability as a private corporation. *Maxmilian* v. *Mayor, &c. of New York*, 62 N. Y. 160; *Eastman* v. *Meredith*, 36 N. H. 284; Dillon on Municipal Corporations, §§ 965 *a*, 980; Goodnow on Municipal Home Rule, ch. vii.

The difficulty arises in determining to which class any particular power belongs. Is a city which establishes and maintains a system of water-works by permission of the State exercising a governmental function, or is it merely performing the work of a private corporation? The argument from analogy leads to but one conclusion. The cases where the city is liable to an action of tort for failure to perform a duty voluntarily assumed are limited strictly to those where the duty is incurred in the performance of such a purely business undertaking as the management of docks and wharves at a profit. *Mayor, &c. of Lyme Regis* v. *Henley*, 3 B. & Ad. 77; *Pittsburgh City* v. *Grier*, 22 Pa. St. 54. Where the duty is undertaken for the public good, the city is not liable. It is accordingly held everywhere that the power to establish a fire department is governmental, and

that consequently the city is not liable for the neglect of firemen to perform their duties adequately. *Fisher* v. *Boston*, 104 Mass. 87; *Wheeler* v. *Cincinnati*, 19 Ohio St. 19. And in the similar case of public waterworks, which certainly are not maintained as a matter of private corporate interest, but for the general welfare and protection, it has also been held with great unanimity, in accord with the decision under discussion, that neglect to carry on the work adequately will not support a private action. *Tainter* v. *Worcester*, 123 Mass. 311; *Mendel* v. *Wheeling*, 28 W. Va. 233; *Black* v. *Columbia*, 19 S. C. 412.

It is often said that where a city derives a profit from exercising a particular function, it is playing the part of a private corporation and is liable as such. And accordingly it was contended, in *Insurance Co.* v. *Village of Keeseville*, that the fact of the town's receiving rents from the takers of the water showed that it was a private enterprise. In answering this argument the court points out that "the imposition of water rents is but a mode of taxation, and a part of the general scheme for the purpose of raising revenue with which to carry on the work of government."

It should be borne in mind that the question discussed above is as to the liability of a city for failing to perform, or for performing inadequately, a public duty. A different question arises in considering the liability of the city, not for mere nonfeasance, but for misfeasance in the performance of a duty, causing direct damage to the person or the property of a citizen. *Hill* v. *Boston*, 122 Mass. 344, 358; Dillon on Municipal Corporations, § 966. Many of the cases which seem at variance with *Insurance Co.* v. *Village of Keeseville*, and the principles above set forth, are distinguishable on this ground. See, for example, *Scott* v. *Manchester*, 2 H. & N. 204; *Bailey* v. *Mayor, &c. of New York*, 3 Hill, 531; *Murphy* v. *Lowell*, 124 Mass. 564.

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Conveyance of an Expectant Estate. — The Kentucky Court of Appeals recently declared that the conveyance by a son of his expectant interest in his father's estate is invalid, even in equity. This decision meets with some support, but is contrary to the weight of authority. The court, while following two previously adjudicated Kentucky cases, also supports its decision by an argument of some length. It points to the generally accepted rule that the conveyance or assignment of a bare possibility is at law invalid, and argues that equity should not contradict the law, especially since the equity courts cannot agree upon a common theory for the enforcement of such a conveyance. It further asserts that to hold the conveyance invalid will be to "save multiplying contentions, protect the improvident children and heirs at law from fraud and deceit, — save free and untrammelled the actions of the possessors of estates in their distribution." *McCall's Adm'r* v. *Hampton*, 32 S. W. Rep. 406 (Ky.).

It is by no means a safe premise that equity should always follow the law; and the argument that, because courts of law will not recognize a conveyance, courts of equity must also decline to recognize it, is unsound. The fact is that most American courts of equity will support such a conveyance, while hardly a court of law will do so. But there is unquestionably much confusion as to the theory on which it is to be supported. Some jurisdictions apply the rules for the conveyance of real property. This leads them into the doctrine of estoppel, with all the confusion that